FINAL STATEMENT OF REASONS

STATE OF CALIFORNIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
CALHOME PROGRAM REGULATIONS

SUMMARIES AND RESPONSES TO PUBLIC COMMENTS

On April 25, 2003, the California Department of Housing and Community Development (hereinafter referred to as either "HCD" or "the Department") noticed the public of proposed CalHome Program regulations to be adopted in Title 25, California Code of Regulations, Division 1, Chapter 7, Subchapter 9, commencing with Section 7715.

Public comments on the proposed regulations were received from April 25, 2003 through June 9, 2003. This document contains summaries of and responses to the public comments. The comments are listed under the appropriate citation of the regulation that was proposed.

The following submitted written public comments:

- Matthew C. Schwartz **(MS)**, Executive Director, California Housing Partnership Corporation (CHPC)
- Jerry Rioux **(JR)**, Project Manager, City of Watsonville
- Olson Lee **(OL)**, Assistant Deputy Director, San Francisco Redevelopment Agency
- Bob Moncrief **(BM)**, Housing and Redevelopment Director, City of Santa Monica
- Myles F. Corcoran **(MC)**, Chair, Community Land Trust of Santa Cruz County, Inc.
- Leslye Corsiglia **(LC)**, Director, City of San Jose Department of Housing
- Peter Carey **(PC)**, Executive Director, Self-Help Enterprises
- Steven Sopp **(SS)**, City of Avenal
- Paula Mushrush **(PM)**, County of Humboldt
- Rebecca Madrigal **(RM)**, County of Fresno
- Rebeca Dennis **(RB)**, Coachella Valley Housing Coalition
- Mark Stivers **(MS)**, Staff, California State Senate Housing and Community Development Committee

Comments were given at the Public Hearing held at HCD Headquarters on June 9, 2003 by:

- Tom Cook **(TC)**, City of San Jose Housing Department
- Al Borvice **(AB)**, Housing Development & Neighborhood Preservation Corporation

[In summarizing the comments, the initials of the above persons have been used for convenience.]

The bulk of the written comments received were regarding two sections of the regulations:

- Section 7726(e);
  - "Shared appreciation, resale restrictions, or other similar restrictions or terms are prohibited on all CalHome Program loans."
- Section 7731. Mortgage Assistance Underwriting Requirements, subsection (a)(4);
  - "(4) financing subordinate to the CalHome Program loan:

    (A) subordinate financing shall not have an interest rate exceeding three percent (3%) simple interest per annum, deferred for the term of the loan;

    (B) fees and/or charges for subordinate financing shall be consistent with reasonable loan origination fees for first mortgage financing as determined by the Department based on industry standards;

    (C) there must not be a balloon payment due before the maturity date of the CalHome Program loan;

    (D) all subordinate financing provided shall defer principal and interest payments for the term of the CalHome Program loan;

    (E) the borrower cannot be restricted from selling the home at its fair market value at any time;

    (F) shared net appreciation terms are allowed only as follows:

    (i) gross appreciation is calculated by subtracting the original sales price from the current sales price or the current appraised value if the loan accelerating event is other than sale of the property;

    (ii) net appreciation is calculated by subtracting the seller's applicable closing costs, seller's cash contribution in the original purchase transaction, the value of seller's sweat equity, if applicable, and the documented value of capital improvements from the gross appreciation amount;

(iii) the subordinate lender may only claim repayment of the principal, interest and a portion of the net appreciation. That portion of the net appreciation which may be claimed by the subordinate lender is equal to one-half of the percentage of the value of the residence financed by the subordinate loan. That is, if the loan equals twenty percent (20%) of the initial value of the residence, a maximum of ten percent (10%) of the appreciation may be charged by the subordinate lender.

The comments primarily included the following concerns:

- Because these existing programs have resale controls which specify the sales price at some level below fair market price at which the assisted party may re-sell their home, they could therefore not use CalHome Program loans in these transactions because of the language in Section 7726(e) and Section 7731(a)(4).
- And/or these programs have recapture provisions which do not agree with the provisions of Section 7731(a), and they could therefore not use CalHome Program loans in these transactions.

Specific comments are summarized below.

MS: Because the cost to develop for-sale homeownership housing exceeds the price a low-income person can pay, local government and non-profit agencies subsidize these transactions and attach regulatory agreements which limit windfall profits and allow the agency to purchase and resell the property to another low-income household. Without a cap on sales price, the amount of additional subsidy required to make the resold unit affordable to another income-qualifying household is significant, and is therefore not a sustainable policy over time.

- Believes the limitation on resale restrictions and shared appreciation/recapture conflicts with the long-term affordability requirements attached to the use of redevelopment funds.

JR: "The department has neither the authority nor a need to limit or prohibit resale controls or shared appreciation on these homes."

- Contrary to the ISOR statement regarding the homeowners ability to "receive the full benefits of homeownership, including the financial benefits", commenter states government agencies do have the right, and often the obligation to restrict an owner's ability to sell an assisted unit at fair market value.
- States, units produced under California's Density Bonus Law must have resale restrictions, and ownership units assisted by Redevelopment Agencies must have resale restrictions.
- The CalHome legislation allows financing of Limited Equity Housing Cooperatives which have resale restrictions as a major feature of that model.

This is inconsistent with the prohibition to allow resale controls on CalHome Program loans.

OL: Mr. Lee's comments regarding resale controls reference Section 7726(e) which (as stated earlier) prohibits the attachment of restrictions to the CalHome Program loan. His concerns are actually aimed at Section 7731(a)(4)(A-F), which control subordinate financing. All the transactions he describes as part of the City of San Francisco's homeownership program would include redevelopment funds as well as CalHome Program funds. Further his reference to the California Redevelopment Act is responding to the requirements he sees attached to the use of redevelopment funds (20% set-aside money).

- Provides an example illustrating his contention that the shared appreciation model requires significant additional subsidy after the housing unit is sold at fair market price (purchased by the agency with its right of first refusal) to make it affordable to another income-eligible household.
- States without relaxing the regulatory limitations and controls, the City of San Francisco Redevelopment Department will not be able to use CalHome Program funds in its homeownership program.
- Urges elimination of regulatory limitations on resale controls.

BM: The City of Santa Monica purchased an aging mobile home park, and is investing approximately $7 million of redevelopment money in renovating the park. The City will then "sponsor" the design, production and installation of 34 new manufactured homes which will be sold to existing low-income residents (residents of "derelict and dilapidated units" ranging from trailers to RVs) at $55,000 to $60,000. Rents on the spaces will be governed by rent control. The median home sale price in Santa Monica is $958,710, and the median condominium price is $408,911.

- Mr. Moncrief is concerned the new manufactured home owners will be tempted to resell their units at a huge windfall profit if there are no resale restrictions in place.
- Further states the opportunity to provide affordable ownership units in the Santa Monica market are very limited, and the lost affordable units would not likely be replaced.

MC: Their mission is to create home ownership opportunities which are "affordable in perpetuity". The model of shared appreciation in Section 7731 does not comply with their method of resale controls.

LC: The City of San Jose has a successful and popular Teacher Homebuyer Program (THP), under which they layer subsidies to make a home purchase affordable for a qualified teacher. Several of the layers are provided by the California Housing Finance Agency (CalHFA). As part of their arrangement with CalHFA, they came to terms regarding equity sharing (contingent interest) in the case of a resale. The arrangement includes 100% of the pro-rata share of the net appreciation going to the City of San Jose, not to exceed 8% per year simple interest on the original subsidy. This is greater than the

CalHome Program stipulation regarding restrictions on subordinate financing of 50% of the pro-rata share and 3% interest.

- Recommends eliminating Section 7731(a)(4)(A-F).

MS: It seems odd and short-sighted that the department would be prohibiting provisions of resale controls and equity sharing to be attached to CalHome Program funds, and to subordinate financing, when in other contexts it promotes long-term affordability.

- Equity sharing would help to replenish funds to assist additional families.

PC: Supports 7726(e), and agrees with the idea that homeownership should not be compromised by undue hardships for the owner when they desire to sell their property, and applauds the department for proposing no resale restrictions on CalHome loans.

- Supports 7731(e); Agrees with these limitations on subordinate financing, as long as they don't interfere with requirements of other funding sources like HOME and Redevelopment funds. Supports the idea of allowing the homeowner to sell at market value, but would include granting the Right of First Refusal to the Recipient to help ensure affordability.

Response to Comments: Section 7726 & 7731(a)(4)

The comments received were primarily in opposition to any prohibition by the department on resale controls and recapture. These are seen as an impediment to allowing local jurisdictions to design their programs to meet local conditions. Several writers describe the extreme challenges they face in their very high cost areas to be able to provide homeownership opportunities for low-income buyers. They state that to make it work, program models must provide layers of subsidy that include funds from multiple sources. The amount of subsidy required to make each unit affordable is significant. After assisting a first-time homebuyer, in some cases they have seen these affordable units resold at market rate, thereby allowing the subsidized homeowners to realize windfall profits (in markets with rapid appreciation of property values), and making the units no longer affordable to low-income buyers. The affordability was therefore lost.

They contend the model we would allow in Section 7731 would not work. They have legal, philosophical and political objectives which require them to include controls on the resale price of an assisted home. Having placed significant subsidy into each deal, they cannot afford to continue to subsidize the same unit each time it comes up for sale. Additionally, they are committed to maintaining the long term affordability of the assisted units.

They argue the CalHome Program statute's stated intent is to "support existing programs", and this was how these existing programs were designed. The regulations as proposed do not support them.

On the other hand, we received comments in support of the program's proposed position. Commenters state that low-income buyers should, as much as possible, be allowed to gain all of the benefits of homeownership, including the wealth generation opportunity that can come with appreciated value of the owner's home. They argue that the homebuyer, while assisted in the initial purchase, is required to repay the subsidy plus interest. They should then be allowed to enjoy the potentially significant benefit of home appreciation. This benefit means possible money in their pocket, and, of equal significance, it allows the family to continue to participate in the for-sale housing market in their community, even as values appreciate.

It is our considered opinion that both positions have merit. The challenge to provide homeownership opportunities to low-income Californians is a puzzle with diverse solutions, as varied as the many markets in the state.

In high cost areas, where the market will not naturally provide affordable for-sale housing, and where permanent affordability is a major concern as available affordable units vanish, resale controls (restricting the sales price to a limit below market rate) meet an important public policy objective. Because of very high development costs, the creation of affordable units requires extreme subsidy from multiple sources. If these jurisdictions participated in the CalHome Program, the CalHome funds would be a small, but important part of the overall subsidy package.

In areas where the subsidy required to bridge the affordability gap between what the market offers in for-sale homeownership opportunities and what a low-income borrower can afford is less, a moderate deferred payment loan from the CalHome Program may be the answer. In these cases, long term affordability is not necessarily a local program concern, because the market is more accessible to low-income buyers, the affordability gap is reasonably bridgeable. These markets, and these local program designs, may then offer the opportunity for the owners to benefit from full participation in homeownership.

Our proposal regarding the two controversial proposed sections of the regulations are as follows:

In order to support the existing programs which layer additional subsidies beyond the CalHome Program Loan, and which may include an array of resale and recapture provisions, we propose to remove the restrictions on subordinate financing <u>found in subsection (a)(4) </u>of Section 7731 which prohibited or controlled these local program features. <u>Subsection (a)(4) will now read:</u>

(4) financing subordinate to the CalHome Program loan:

(A) ~~subordinate financing shall not have an interest rate exceeding three percent (3%) simple interest per annum, deferred for the term of the loan;~~

(B) fees and/or charges for subordinate financing shall be consistent with reasonable loan origination fees for first mortgage financing as determined by the Department based on industry standards;

(C) there must not be a balloon payment due before the maturity date of the CalHome Program loan;

(D) all subordinate financing provided shall defer principal and interest payments for the term of the CalHome Program loan;

~~(E) the borrower cannot be restricted from selling the home at its fair market value at any time;~~

~~(F) shared net appreciation terms are allowed only as follows:~~

~~(i) gross appreciation is calculated by subtracting the original sales price from the current sales price or the current appraised value if the loan accelerating event is other than sale of the property;~~

~~(ii) net appreciation is calculated by subtracting the seller's applicable closing costs, seller's cash contribution in the original purchase transaction, the value of seller's sweat equity, if applicable, and the documented value of capital improvements from the gross appreciation amount;~~

~~(iii) the subordinate lender may only claim repayment of the principal, interest and a portion of the net appreciation. That portion of the net appreciation which may be claimed by the subordinate lender is equal to one-half of the percentage of the value of the residence financed by the subordinate loan. That is, if the loan equals twenty percent (20%) of the initial value of the residence, a maximum of ten percent (10%) of the appreciation may be charged by the subordinate lender.~~

In order to allow low-income homebuyers the opportunity to accrue the maximum benefit from homeownership in markets where no additional subsidy beyond the CalHome Program loan is required, the language in Section 7726 has been modified. In the case where the CalHome Program loan is the only subsidy (beyond the "performing" first mortgage) the borrower must be allowed to sell the home at fair market price. The recipient will, however, be allowed to share the equity accrued from the any appreciation in the local market. Subsections (d) - (e) and a new (f) will now read:

(d) All CalHome assistance to individual households shall be made in the form of a loan. Recipients may make CalHome Program loans bearing simple interest up to three percent per annum, and may allow forgiveness of all or a portion of the accrued interest as part of its local program design. Loan principal shall not be forgiven, except as allowed by statute. In lieu of making loans bearing a fixed rate of interest, recipients may instead charge contingent deferred interest in the form of shared net appreciation as set forth in subsection (e).

~~(e) Shared appreciation, resale restrictions, or other similar restrictions or terms are prohibited on all CalHome Program loans.~~ Shared net appreciation is allowed, only as follows:

(1) gross appreciation is calculated by subtracting the original sales price from the current sales price or the current appraised value if the loan accelerating event is other than sale of the property;

(2) net appreciation is calculated by subtracting the seller's applicable closing costs, seller's cash contribution in the original purchase transaction, the value of seller's sweat equity, if applicable, and the documented value of capital improvements from the gross appreciation amount;

(3) the recipient may only claim repayment of the principal, interest and a portion of the net appreciation. That maximum portion of the net appreciation which may be claimed by the recipient is equal to the percentage of the value of the residence financed by the CalHome Program loan. That is, if the loan equals twenty percent (20%) of the initial value of the residence, a maximum of twenty percent (20%) of the appreciation may be charged by recipient.

(f) In any loan transaction where the CalHome Program loan is the only subsidy, the borrower cannot be restricted from selling the home at its fair market value at any time.

The following are comments on additional sections of the proposed regulations, arranged by section.

Section 7716 Definitions

PC COMMENT**:** 7716(g) (and Section 7751, Selection Criteria (b)(4)) "Community Revitalization": In a competitive process where points are awarded for community revitalization, this may work against rural applicants, because the rural areas often lack the resources to fund community revitalization programs.

RESPONSE: The statute specifically states the purpose of the CalHome Program is to "encourage neighborhood revitalization…". It also includes "community revitalization" as one of the weighted evaluation criteria. It is therefore important to include a definition of neighborhood revitalization in these regulations. This definition is an accepted description of the community revitalization. The statute requires that the application process ensure a reasonable geographic distribution of funds. For this reason, the NOFA will include a rural set aside to "level the playing field". NO CHANGE.

PC COMMENT: (kk) "Rehabilitation" Wonders if site improvements would be allowed (septic, well, etc.). States it is not clear in the definition. Also recommends changing the following sentence to clarify intent: "Rehabilitation includes reconstruction and additions to alleviate overcrowding" change to: "Rehabilitation includes reconstruction. Rehabilitation also includes room additions as required to prevent overcrowding."

RESPONSE: Site improvements will be allowed if they are included in a recipient's rehabilitation program guidelines as allowable. The CalHome Program believes these are reasonable and eligible.

The clarification of the language regarding reconstruction is made as suggested, because it does go to the original intent.

(a) "Rehabilitation" means, in addition to the definition in Health and Safety Code, Section 50096 and Section 50097, repairs and improvements to a manufactured home necessary to correct any condition causing the home to be substandard pursuant to CCR, Title 25, Section 1704. ~~Rehabilitation includes reconstruction and additions to prevent overcrowding.~~ Rehabilitation includes reconstruction. Rehabilitation also includes room additions to prevent overcrowding. Rehabilitation also means repairs and improvements which are necessary to meet any locally-adopted standards used in local rehabilitation programs. Rehabilitation does not include replacement of personal property.

PC COMMENT: (oo) and (pp) "Self-Help construction" and Self-help technical assistance": Cites a lack of clarity on what minimum standard must be present to be considered a self-help project. Mr. Carey supports a minimum standard for self-help construction of 500 hours of labor by the future homeowner.

RESPONSE: The CalHome statute does not contain a definition of "self-help construction." The proposed regulation refers to the California Self-Help Housing Program (CSHHP) section of the Health and Safety Code for its definition. This definition has served the CSHHP well for many years. The statutory language would seem to allow some flexibility intentionally, and this should be our guide. The current language complies with this intent, and will remain. However, the CalHome statute does require that the Department use weighted evaluation criteria including the extent to which a project or program uses self-help labor. Therefore, the Department has utilized the "five hundred hours of volunteer labor" benchmark as a criterion for additional points in the application process. NO CHANGE.

JR COMMENT: A definition of **Maximum Sales Price/Value Limit** is missing. Suggests the following:

> "**Maximum Sales Price/Value Limit"** means 95% of the current median sales price for single family homes in the CalHome Program or project is located."

Definition of "**Homeownership"** should include ownership of a manufactured home.

Definition of **"Manufactured Home"** should be changed to clarify the fact that a manufactured home can be either in a rental mobile home park or on property owned by the occupant, and can be either on a permanent foundation or not.

Definition of **"Mortgage Lender"** should include mortgage brokers, who are a primary source of homebuyer financing.

RESPONSES: these suggestions have been incorporated in the regulations.

(aa) "Maximum Sales Price/Value Limit" is the maximum allowable sales price or the maximum after-rehab value of a home assisted with a CalHome Program loan. This shall be set at 100% of the current median sales price of a single family home in the county in which the CalHome Program or project is located.

(s) "Homeownership" means:

(1) for mortgage assistance: fee simple title on real property or a leasehold interest on real property that enables the lessee to make improvements on and encumber the property and has a term sufficient to secure the CalHome loan, ownership of a manufactured housing unit located on a rented space in a mobilehome park; or

(2) for owner-occupied rehabilitation: fee simple title; or a leasehold interest that enables the lessee to make improvements on and encumber the property and has a term sufficient to secure the CalHome loan; or ownership of a manufactured housing unit located on a rented space in a mobilehome park.

(3) a share interest in a limited equity housing cooperative; or

(4) an interest in a mutual housing project that meets the definition in Section 7716(ff).

(z) "Manufactured housing" means a mobilehome as defined by Section 18007 of the Health and Safety Code. A manufactured home can be either in a rental mobile home park, on leased land, or on property owned by the occupant. It can either be on a permanent foundation or a foundation system. In these regulations, with respect to manufactured housing not installed on a permanent foundation, terms that typically apply to conventionally constructed housing or to loans secured by real property shall be given the appropriate analogous meaning used in the manufactured housing industry. For example, rather than holding fee title to the property, a manufactured home owner is listed as the registered owner on the certificate of title issued by the Department.

(ff) "Mortgage lender" means a bank or trust company, mortgage banker, mortgage broker, federal or state chartered savings and loan association, State or Federal governmental agency or credit union whose principal business is to originate, process, close and service loans for the purchase or development (if appropriate) of property. "Mortgage lender" also includes nationwide institutions whose primary purpose is to develop housing and provide first mortgage financing to low-income purchasers of the developed housing.

JR: Definition of **"housing development project"** should be changed to preclude scattered site and infill development where the applicant only requires downpayment assistance.

RESPONSE: The suggestion to limit housing development projects is considered but will not be included because scattered site and infill projects are encouraged as an important part of the mix of possibilities required to fill the need for affordable homeownership opportunities. NO CHANGE.

COMMENTS: Section 7717(b)(2) and Sections 7728 & 7732 – Eligibility Requirements for Mortgage Assistance and Housing Rehab Programs

PC: Regulations will make it difficult for new grantees to participate due to threshold requirement of four years housing program experience. Recommends rating and ranking be based on experience of the entire project team including and "committed external partners or consultants."

MS: Requiring four years of experience to be an eligible applicant means only communities where programs already exist will be funded. Whereas communities who have not previously had the resources to offer programs will be excluded, even where there is significant need. Although experience is important, recommends that four years experience no longer be a threshold criterion for an applicant's consideration. States credit is not given for similar experience, e.g. operating a homebuyer program as eligibility for a downpayment assistance program.

PM: Suggests making the complexity of the activity applied for drive the experience requirement, i.e. easier programs like homebuyer mortgage assistance would require less experience than self-help. Threshold should be the minimum required, but additional experience would be above the threshold as part of the rating and ranking process.

RESPONSE to Sec. 7717(b)(2) & (3): The original requirement of four years experience was derived from the Health and Safety Code Section 50650(c) which acknowledges proven existing approaches and existing programs to encourage homeownership. It states the purpose of the CalHome Program "is to support existing homeownership programs aimed at lower and very low income households". The department had determined four years of experience would qualify an applicant as an existing program with capability and a track record. These regulations allow considerable flexibility to the local programs, in terms of program design and program guidelines, and program administration. In order to be comfortable with this level of flexibility and "hands-off" approach, it is vital the applicant show past success in a similar activity, which would likely predict future success with CalHome Program funds.

Upon further review, it was determined the four year experience requirement might be too restrictive. The section has therefore been changed to require only **two years experience operating a housing program or as a housing developer.** It is hoped this change will open the process up to smaller cities, and newer, capable programs.
The section now reads:

(b) Stability and capacity:

(1) To be eligible for funding, the applicant shall demonstrate to the Department's satisfaction that it has sufficient organizational stability and capacity to carry out the activity for which it is requesting funds.

(2) In order to demonstrate organizational stability, the applicant shall have been operating as a housing developer or housing program administrator for a minimum of ~~four~~ two years prior to the date of application.

(3) A nonprofit corporation must be a corporation whose exempt purposes for the ~~four~~ two years prior to the date of application have included the activity for which it is applying.

(4) A nonprofit corporation shall also demonstrate financial stability to the Department's satisfaction through audited financial statements

submitted for Department review as part of its application for funding.

SS COMMENT: Section 7719(b)(2) Eligible and Ineligible Uses of Funds

The proposed uses seem to preclude the use of CalHome Program loan funds for landscaping and fencing as part of a rehabilitation project. These are often very important aspects to a successful rehab project.

RESPONSE: The terms “rehabilitation” and “rehabilitation standards” are statutorily defined (Health and Safety Code Secs. 50096, 50097) as is the definition of a “substandard building” (Health and Safety Code Sec. 17920.3). None of these sections expressly include landscaping or fencing. However, as part of the general thrust of these regulations to defer to local program design, the definition of rehabilitation contained in Section 7716(kk) includes a provision permitting repairs and improvements necessary to meet any locally-adopted rehabilitation standards.

COMMENTS: Section 7722 Homebuyer Education

PC: Regarding curriculum review: Suggests checking curriculum at monitoring, or if necessary include it in the application so as not to stall the contract set-up process.

PM: Homebuyer education is a great idea, but is often not available in rural areas. Existing programs rather than newly developed programs should get the points.

RESPONSE: The approval of a local program’s Homebuyer Education curriculum will not stall the contract set-up process. Previously, the Program required approval of the curriculum prior to completion of contract set-up. The new regulations require the recipient to provide us with a curriculum which addresses a list of topics, but is not prescriptive in terms of the details of the recipient’s program. The CalHome Program concurs with industry research which has shown that providing homebuyer education to new homebuyers increases the likelihood of their success in overcoming the challenges which come with homeownership. Rural programs may have to partner with existing resources like, title companies, realtor groups, and other non profits, to present homebuyer education. NO CHANGE.

COMMENTS: Section 7725 Maximum Loan Amounts

PC: Urges allowing the local program to develop the underwriting formulas to be used to determine loan amounts. Concerned that if proposed loan limits are not published prior to NOFA release, with comments solicited, adequate limits might not be set.

RESPONSE: It is the intent of this section to allow for flexibility in setting the maximum loan limits for CalHome Program loans. The CalHome Program realizes the needs of local programs vary based on factors like: local construction costs, current prices of housing, additional resources available to layer with CalHome, income levels of assisted homebuyers/homeowners, and others. Therefore, in the first NOFA to be issued following the adoption of these regulations, the maximum loan amount will be set by each local program. The CalHome Program will review the success of this approach after these contracts are operating. Local control, with the flexibility to address local needs is a vital part of the CalHome Program regulatory design. NO CHANGE.

COMMENTS: Section 7726 Loan Terms

LC: Recommends that the agency making the CalHome Program loan be permitted to extend the term of the loan, if it is determined paying off the loan is a financial hardship to the family.

PC: Recommends that the recipient have the option of converting the loan to an amortized loan at the end of the thirty-year term. Regarding subsection (c)(3) -- because loans are not assumable by their children, some elderly homeowners choose not to repair their homes. In home purchase transactions, many other financing programs will allow for assumption in certain circumstances.

RESPONSES: The statute states "financial assistance to individual households shall be in the form of deferred payment loans, repayable upon sale or transfer of the homes, when they cease to be owner-occupied, or upon loan maturity date." The loans must therefore be paid upon loan maturity date, and are not assumable. The department's experience with homeownership and rehabilitation loans has shown that thirty years as a maximum loan term meets almost all of the borrower's requirements, and does not likely present a hardship. Further, loan repayments are made to the recipient's re-use account to be used for eligible CalHome Program activities, and it is hoped the local programs will be able to build up this re-use account to make additional loans, to assist other eligible borrowers. However, in a circumstance where it is determined by the recipient that repayment of the CalHome Program loan at the thirty-year maturity date causes a hardship to the borrower, the Program will allow two other options. They are:

- Amending the note and deed of trust to defer repayment of the amount due at loan maturity, that is the original principal and the accrued interest, for up to an additional 30 years (at 0% additional interest), this may be offered one time, or;
- Converting the debt at loan maturity, that is the original principal balance and any accrued interest, to an amortized loan, repayable in 15 years at 0% additional interest.

The new text is:

(c) Homeowner/Homebuyer CalHome Program loans shall have the following terms and conditions:

(1) principal and interest payments shall be deferred for the term of the CalHome Program loan;

(2) loans shall be repayable upon sale or transfer of the property, when the property ceases to be owner-occupied, or upon the CalHome Program loan maturity date; However, if it is determined by the recipient that repayment of the CalHome Program loan at the maturity date causes a hardship to the borrower, the recipient has two other options. They are:

(A) Amending the note and deed of trust to defer repayment of the amount due at loan maturity, that is the original principal and the accrued interest, for up to an additional 30 years (at 0% additional interest), this may be offered one time, or;

(B) Converting the debt at loan maturity, that is the original principal balance and any accrued interest, to an amortized loan, repayable in 15 years at 0% additional interest.

RM COMMENTS: Section 7729 Eligible Costs (Mortgage Assistance)

The former CalHome Program Guidelines were explicit regarding allowing the use of CalHome Program funds to fund the lot purchase in a self-help project funded by USDA RD 502. The new regulations, in Section 7729, are not as explicit, and therefore open to interpretation. If the intent is to allow this use, this section needs clarification.

RESPONSE: Rebecca Madrigal's concern is noted. The intent of the regulations was to allow the funding of lot purchase in a self-help project. The language is therefore changed back to the wording used in the CalHome Program Guidelines which explicitly allowed this use.

The new text is:

CalHome funds in support of a mortgage assistance program shall be used only for the following costs:

(a) Mortgage assistance for permanent financing of ~~a dwelling unit ready for occupancy, with the exception of either~~:

(1) a dwelling unit ready for occupancy; or

(2) a ~~dwelling~~ unit acquired by ~~an acquisition/rehabilitation loan~~ a loan such as a HUD FHA 203(k) ~~acquisition/rehabilitation~~ loan~~; or~~. This includes ~~for~~ self-help housing mortgage assistance, except that CalHome permanent financing may be disbursed at time of lot purchase where the self-help housing is being financed ~~by programs such as~~ under the U. S. Department of Agriculture, Rural Housing Service 502 program;

COMMENTS: Section 7729(d) & 7733(f) Eligible Costs

PC: Activity delivery fee appears to only be available to cover successful loan closings. If this is the case, a minimum of 10% as activity delivery on mortgage assistance loans would be adequate, but for rehabs, due to the extensive work involved, 20% to 25% is really more appropriate.

SS: Disappointed there are no administrative funds allowed for in the program. Due to significant work and reporting requirements, and tight budgets, the City of Avenal won't be able to participate without admin funds. Recommends following the CDBG model of administrative funds plus an activity delivery allowance.

RESPONSE: The CalHome statute, in contrast to some of the Department's other program statutes, does not provide for the payment of local administrative costs (see, for example, Health and Safety Code sec. 50661(a)(5) expressly permitting funds to be used for local administrative costs). Moreover, for the foreseeable future, the only source of funds for the CalHome program will come from Proposition 46 general obligation bonds. Under general bond law, bond funds may not be used for general local administrative costs. However, the Department does recognize there are direct costs associated with the provision of loans to individual households. That is why the regulations provide for an activity delivery fee. NO CHANGE.

The proposed NOFA, which will be released upon adoption of these regulations, will include activity delivery funds to the extent deemed permissible by the Department's bond counsel.

COMMENT: Section 7731(a)(1) "establish front and back-end ratios used to qualify the borrower."

LC: The mortgage industry increasingly uses only the back-end (total debt) ratio in their underwriting calculations, no longer using front-end ratios. It is recommended the term "front-end" be removed from the section.

RESPONSE: It will be the option of the local program to define the terms in its program context. The CalHome Program sees no necessity to remove the "front-end ratio" language from the regulations as it does not limit the local program's flexibility. NO CHANGE.

COMMENT: Section 7733 Eligible Costs

PC: Will relocation be an eligible expense in an owner-occupied rehabilitation loan project?

RESPONSE: In order to maintain consistency across various programs funding the same activities where possible, and insofar as relocation is an eligible use of funds in CDBG and HOME funded rehabilitation projects, it has been determined relocation would be an eligible cost in a CalHome Program funded owner-occupied rehabilitation loan

COMMENTS: Section 7735 Underwriting and Construction Requirements

PC: Will credit reports be required and used as a basis of participation in rehab programs? Low-income families often have credit problems, but since the loans are secured by a deed and the payments are deferred, the ability to pay is irrelevant. Repair of the homes is the most important issue.

LC: Recommend waiving the requirement of rehab guidelines, title insurance and fire insurance (and flood insurance where applicable) for small rehabilitation loans. San Jose has a "Zero Loan" program (0% interest, deferred payment, up to $15,000 maximum) which is very successful in addressing emergency repairs. Waiving these requirements would make the CalHome Program loan funds a good fit with this successful program.

RESPONSES: It is the intent of the CalHome Program to allow local programs to develop and employ their own Owner-Occupied Rehabilitation Program Guidelines, and to address issues like the credit worthiness of their borrowers. The Program agrees with Peter Carey's comment that since these are deferred payment loans, and the primary purpose of the program is to address substandard conditions, credit should not be a primary factor used in determining loan eligibility. NO CHANGE.

Regarding waiving the requirement of rehab guidelines, the CalHome Program does not believe requiring guidelines will be an impediment to addressing local needs. The Program believes that title insurance, fire and flood insurance are important protections for the recipient, and therefore provide important protection for public funds, and should remain a requirement of all CalHome Program rehabilitation loans. NO CHANGE.

COMMENTS: Section 7738 Self-Help Technical Assistance Requirements

PC: Subsection (a): Regarding the need for Self-Help T. A. Program Guidelines: Established self-help program operators have a series of rules and procedures they follow that have served them well. Perhaps, programs in good standing with other funding sources, i.e. USDA RD, could have the requirement waived.

RD: Mutual Self-Help is the only means through which many low and very low-income families can achieve the dream of homeownership. Applauds the department's support of mutual self-help, and suggests this self-help model, where a group of families provide up to 65% of construction labor, be given priority in funding for Technical Assistance grants.

RESPONSES: The CalHome Program believes the requirements for Program Guidelines will help provide consistency across the board for Self-Help Technical Assistance providers, and give Program staff important insight into local programs. The established self-help operators will be able to take their existing rules and procedures and fit them easily into the framework of a set of guidelines.

Regarding the request that priority be given to mutual self-help projects, the CalHome Program agrees with the comments regarding the power of community that can be built through the mutual self-help model. The Program believes this restriction of giving priority to projects using mutual self-help may limit programs exploring other, perhaps equally powerful models. NO CHANGE.

COMMENT: Section 7748 Development Requirements

PC: Subsection (a)(2) Supports section as written which requires having financing commitments in place prior to disbursement of funds, rather than at time of application.

RESPONSE: The CalHome Program thanks Peter Carey for his support.

COMMENTS Section 7751 Section Criteria

JR: Section 7751(b)(2) Community Need:
The section should specify the statistics to be used to determine community need, rather than the unclear description in the section as proposed. He further proposes using criteria to evaluate the need for a first-time homebuyer program like percentage of owner occupied units, percentage of owners and renters who overpay for housing, vacancy rates, overcrowding, population growth, or fair share housing needs. Consider the use the age of housing stock.

RESPONSE: The request for clarification is appreciated. The current language does not describe clearly or accurately what the criteria are for awarding up to 150 points. The request for expanded criteria which might more fully and accurately gauge community need is also on target. The additional request regarding disclosure of the source of this data is equally important.

In searching for ways to address the commenter's appropriate concerns, CalHome Program staff consulted with the staff of the HCD HOME Investment Partnership Program which funds similar activities in the same locations. HOME also includes community need as one of its scoring parameters in rating applications. HOME has recently expanded its definition of community need to include the assessment of individual community information in additional areas, including;

- age of housing stock,
- numbers and percentage of substandard housing units,
- overcrowding of housing in a jurisdiction,

- percentages of households that are below poverty level and who are living in substandard or overcrowded conditions, and
- the ratio between the median home sales price and the median household income in the jurisdiction.

All of this data is available by jurisdiction from the 2000 Census.

In order to maintain consistency across HCD homeownership programs, and to simplify the application process for applicants who apply for multiple HCD Community Affairs programs, the CalHome Program will expand Section 7751(b)(2) to include these parameters. The Program also believes this will make the criteria of community need more meaningful as an important scoring factor, and will more accurately measure an applicant's real community need.

The section now reads:

> (2) Community need in a geographic area of the proposed local program or project will be based on one or more of the following factors: poverty level and overpayment for housing ~~purchase programs/projects and~~ by low-income households, age of housing stock in the jurisdiction, numbers and percentages of substandard housing units, overcrowding of housing by tenure (including rental and ownership housing) in the jurisdiction, and percentages of households that are below poverty level ~~for existing owner programs~~ and who are overcrowded and living in substandard housing by tenure, as reflected in U.S. Census data; and the ratio between the median home sales price and the median household income in the jurisdiction. The specific community need factors that will apply to each activity will be identified in the NOFA. (up to 150 points)

JR: Section 7751(b)(3) Feasibility:

States the proposed language does not accurately relate to the feasibility of a proposed program or project. Says the percentage of low-income households who own homes is not an accurate predictor of feasibility of a first-time homebuyer program. He further states statistical indicators cannot evaluate feasibility. The presence of ready and willing low income households has a significant influence on feasibility. Equally, the availability of units affordable to prospective buyers is important. Further, and most importantly, having a program in place which can deliver is the vital link to success.

RESPONSE: Feasibility is intended to measure the objective conditions in a jurisdiction which would lend themselves, all else being equal, to a specific program's success in a given activity. The factors which would be important to the success of a first-time homebuyer program aimed at low-income households would include:

- The percentage of low-income households that are currently homeowners
    - This would indicate based on market conditions, homeownership is likely to be available to low-income households.

- The ratio of median sales price to median income
    - Another measure of market affordability

The Program will be adding to the regulations as a criteria:

- The number of units sold at or below median sales price in a jurisdiction in the previous 12 months.
    - Since this is the limit at which homes can be purchased with CalHome Program funds, this will be a relatively accurate indicator of availability of units which would qualify for purchase with CalHome Program funds.

For owner-occupied rehabilitation programs, the following will be the criteria used for measuring feasibility:

- The percentage of low-income households that are currently homeowners
    - This would indicate a potential customer base for a rehabilitation program.
- The number of overcrowded households
    - This is a likely indicator of low-income households with need for rehabilitation services.
- The age of the housing stock.
    - Older stock means more need for repair/remodel/renovation.

The section now reads:

(3) Feasibility of the proposed activity as demonstrated by either of the following (up to 250 points):

(A) for applications proposing local program activities, the extent to which the proposed local program is responding to a community need. Feasibility will be determined by statistical indicators based on single-source data readily available to the Department for all potential jurisdictions that may apply for CalHome funding.

(i) For mortgage assistance programs, feasibility will be based on U.S. Census Bureau data regarding the percentage of low-income homeownership in a jurisdiction ~~and~~, the ratio of the CalHome appraised value limits relative to the CalHome median income for a four-person household. From data supplied by the California Association of Realtors, the number of homes sold in the previous 12 months in a jurisdiction at or below the median sales price for the jurisdiction. The higher the percentage of low-income homeowners, the higher the points awarded. The higher the ratio of housing cost to income, the higher the points awarded. The higher the number of homes sold at or below median sales price the higher the points awarded.

(ii) For owner-occupied rehabilitation, feasibility will be based on U.S. Census Bureau data regarding the percentage ~~pre-1980 homes in a jurisdiction and U.S. Census Bureau data regarding the percentage of homeowners paying over 30% of their income for housing costs~~ of low-income households that are currently homeowners, the number of overcrowded households, and the age of the housing stock. The higher the percentage of low-income homeowners, the higher the points awarded. The higher the percentage of pre-1980 homes, the higher the points awarded. ~~The higher the percentage of homeowners paying over 30% for housing cost, the higher the points awarded.~~ The higher the number of overcrowded households, the higher the points awarded.

Regarding the comment about a program's ability to effectively deliver as a feasibility issue, this is already measured in the capability section of the scoring, and is worth up to 400 points.

PC COMMENT Section 7751(b)(5):
Expresses concern that awarding points to projects and programs which include: Volunteer labor, Self-help labor, and Youth Construction training, could work as a disadvantage for owner-occupied rehabilitation and homebuyer assistance applicants, unless Self-Help Technical Assistance applications compete separately. Self-help does not really apply to home purchase or housing rehabilitation programs.

RESPONSE: Proposed section 7749(b) permits the Department to issue separate NOFAs to meet the purposes of the program. Under this authority, the Department intends to issue separate NOFAs for self-help technical assistance to assure that this activity receives funding. NO CHANGE.

PC: COMMENT Section 7753 Disbursement of Grant and Loan Funds:
The change from reimbursement to advance for payment of grant awards will be appreciated by small cities and counties struggling with cash flow.

RESPONSE: Over the past two years of operation, the CalHome Program heard from its recipients that reimbursement was a hardship for many. In order to support existing programs with a track record of success, the CalHome Program looks forward to offering advances on a schedule to be published in the NOFA.

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